REMARKS

The Office Action mailed June 8, 2005 refers to claims 17-38 and it appears from the image file wrapper that these are the claims that were filed on or about March 28, 2001, as amended by the supplemental reply that was filed on June 4, 2001. However, the claims that appear in the image file wrapper do not include claims 39-42 that were added by the supplemental reply. It is requested that the image file wrapper be updated to reflect claims 39-42 as filed on June 4, 2001.

Claims 29-32 have been amended in order to remove the objections raised by the examiner. Applicant has taken the opportunity to amend claims 26-28 in similar fashion.

Claims 17-38 stand rejected on the ground of obviousness-type double patenting over various claims of U.S. Patent 6,122,937 ("the '937 patent"). Should this rejection be maintained, applicant will file an appropriate terminal disclaimer.

Applicant traverses the rejection on the ground of obviousness-type double patenting.

In support of the rejection, the examiner argues that it would have been obvious to provide a knit product as set forth in claims 17-28, for example, via the process defined in claims 1-5 of the '937 patent. This is not the test for obviousness-type double patenting. In the case of claim 1 of the '937 patent, for example, the test is whether the application claim under consideration if an obvious modification of the patent claim.

The claims of the '937 patent are all directed to a method whereas the claims of this application are all directed to a shaped knit. Accordingly, an activity that infringes a claim of the present application will not necessarily infringe a claim of the '937 patent, or an obvious modification of such a claim, and so there is no prolongation of the rights granted under the '937 patent by issuing the claims of this application and the policy reason for a double patenting rejecting does not arise.

MPEP 804 explains that a reliable test for statutory double patenting is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent and poses the question, "Is there an embodiment of the invention that falls within the scope of [the application] claim, but not the [patent claim]?" If the question is answered in the

affirmative, then identical subject matter is not defined by both claims and statutory double patenting does not exist. One can usefully extend this reasoning to obviousness-type double patenting and pose the question, "Could a claim in the application be literally infringed without literally infringing an obvious modification of a corresponding claim in the patent?" In the case where the patent claim is directed to a method whereas the application claim is directed to a structure, the answer is clearly yes since the application claim could be infringed by sale in the United States of a knit product made outside the United States.

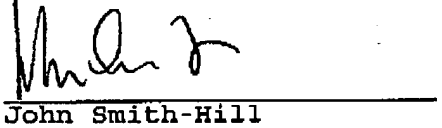
Claims 17-20 and 23-25 stand rejected under 35 USC 102 over GB '998. Applicant has amended claim 17 to include the features of claim 21 and accordingly the rejection of claims 17-20 has been overcome. Claims 23-25 have been cancelled, rendering the rejection of those claims moot.

Claims 26-38 have not been rejected over the prior art. Claims 26-28 have been rewritten in independent form, including all the features of claim 22, and accordingly those claims should be allowable.

Claims 39 and 40, being dependent on claim 17, are allowable.

Based on the foregoing, applicant believes that all claims now of record in this application are allowable and it is therefore believed that this application is in condition for allowance.

Respectfully submitted,



John Smith-Hill
Reg. No. 27,730

SMITH-HILL & BEDELL, P.C.
16100 N.W. Cornell Road, Suite 220
Beaverton, Oregon 97006

Tel. (503) 574-3100
Fax (503) 574-3197
Docket: B&B 1782D1

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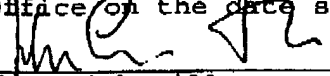

John Smith-Hill

9/21/05

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